

# **EXHIBIT 5**

1 recommendation. I can't remember all of it.  
 2 **Q. Any specific questions about Shotsay asked?**  
 3 A. Specific in what way?  
 4 **Q. Whether any comments were made about her or**  
 5 **anything like that because she was a woman or anything**  
 6 **like that?**  
 7 A. No.  
 8 **Q. So there was no -- do you recall anything else**  
 9 **beside the fact of the driving test, anything else**  
 10 **discussed about Shotsay?**  
 11 A. They asked me how I felt about having a woman  
 12 as a co-worker and whether I was -- had any reservations  
 13 about that kind of situation.  
 14 **Q. And your answers were?**  
 15 A. No.  
 16 **Q. When did you begin working for United Freight?**  
 17 A. 1989.  
 18 **Q. And do you know how many women drivers have**  
 19 **been there?**  
 20 A. I believe there's been five.  
 21 **Q. Five that have been hired?**  
 22 A. Yes, I believe so.  
 23 **Q. How many have been tested? Do you know?**  
 24 A. Tested as in driving test? Every one of them.  
 25 **Q. I'm sorry. I misspoke. That's all there was,**

Page 102

1 just those five women that tested, or was there any other  
 2 women, to your knowledge, that had been tested or  
 3 dispatched and not been hired?  
 4 A. Could have been, but I'm not privy to that.  
 5 **Q. Do you know how long those women lasted?**  
 6 A. Generally, a couple of them didn't last very  
 7 long, month, month and a half. One of them worked for us  
 8 a couple of years. Had another one that didn't last two  
 9 weeks.  
 10 **Q. One lasted a couple of years. Who was that?**  
 11 **Do you know?**  
 12 A. I can't remember her name. I would have to  
 13 look it up.  
 14 **Q. Do you know why she left?**  
 15 A. Yes, I do.  
 16 **Q. Why?**  
 17 A. Unease with the boss.  
 18 **Q. With the boss?**  
 19 A. Yes.  
 20 **Q. What boss?**  
 21 A. Mr. McCormick.  
 22 **Q. What was the unease about?**  
 23 A. She just didn't feel comfortable around him.  
 24 **Q. Was he making any sexual advances toward her or**  
 25 **anything like that?**

Page 103

1 A. No.  
 2 **Q. Was he a bully?**  
 3 A. Just hard to get along with. And she just  
 4 didn't feel like dealing with it anymore.  
 5 **Q. Did you ever talk to her about it?**  
 6 A. After she quit.  
 7 **Q. What did she say?**  
 8 A. Basically what she said was that she just  
 9 didn't feel like dealing with the stress of the situation  
 10 down there and stuff and went on to greener pastures.  
 11 **Q. Did she describe what the stress was?**  
 12 A. Not in great detail, no.  
 13 **Q. Can you tell me what she did tell you?**  
 14 A. We were having some problems between the  
 15 company and Teamsters at that time in regards to -- I  
 16 guess the simplest way to say this is Mr. McCormick  
 17 wanted us to come in on our own time and pretrip  
 18 equipment before we went on the clock.  
 19 **Q. To work off the clock?**  
 20 A. Yes.  
 21 **Q. Did any other male employees complain about**  
 22 **that?**  
 23 A. No. There were other male employees that  
 24 complained about it. They went to the union about it a  
 25 couple of times.

Page 104

1 **Q. So she just did not like the boss. Did she**  
 2 **feel it was because of her gender or just because she was**  
 3 **a driver?**  
 4 A. No, just as a driver. I don't think there was  
 5 any gender involved. She was a good employee. She did a  
 6 good job.  
 7 **Q. Do you think the way -- was he treating her**  
 8 **differently than the other drivers?**  
 9 A. No.  
 10 **Q. Now, the other women who were there, you say**  
 11 **they didn't last that long. Why is it they were not able**  
 12 **to last that long? Did they quit because of frustration**  
 13 **or were they fired?**  
 14 A. I believe a couple of them were let go.  
 15 **Q. Why?**  
 16 A. Just efficiency wasn't high enough. And one of  
 17 them just never seemed to show up for work.  
 18 **Q. What do you mean by "efficiency"? Can you**  
 19 **explain that?**  
 20 A. Taking too long to make deliveries, wasn't  
 21 moving enough trailers in one day.  
 22 **Q. Is there a quota?**  
 23 A. No written quota.  
 24 **Q. Is there basically just a feel?**  
 25 A. Yes.

Page 105

27 (Pages 102 to 105)

William Smith

Deposition

December 8, 2006

1 and just on down the list.  
 2 **Q. And United Freight it's not when you're hired**  
 3 **with that company -- not necessarily how long you've been**  
 4 **a Teamster, right?**  
 5 A. No.  
 6 **Q. So let's assume somebody was hired at United**  
 7 **that's been a Teamster for five years, and they have been**  
 8 **working for say three years at United hypothetically.**  
 9 **And then a guy who has been a Teamster for 15 years, he**  
 10 **gets hired by United, does he jump over?**  
 11 A. No.  
 12 **Q. So the guy who has been there for two years,**  
 13 **even though he's been a Teamster for five years, he's**  
 14 **higher in seniority at United?**  
 15 A. That's right.  
 16 **Q. So he gets to decide I'm going to take a**  
 17 **three-day weekend and go fishing, that kind of thing?**  
 18 A. Yes.  
 19 **Q. And was there a policy at United to ask for**  
 20 **like five drivers for two or three slots?**  
 21 A. Yes.  
 22 **Q. Why was that?**  
 23 A. To get the best qualified driver that they can.  
 24 **Q. Is that a violation of not -- to steer against**  
 25 **the whole seniority system if the actual seniority system**  
 Page 122

1 **did do it that way?**  
 2 A. No, not that I was ever aware of. And the  
 3 union never said we couldn't do it.  
 4 **Q. To your knowledge?**  
 5 A. Yes.  
 6 **Q. You don't know if they talked to Frank about it**  
 7 **and said, hey, we can't do this anymore?**  
 8 A. No. And we had been doing it for almost  
 9 10 years before Frank came along. We had been doing it  
 10 before I came.  
 11 **Q. Asking for more drivers --**  
 12 A. Than positions available.  
 13 **Q. So during that period of time, were there women**  
 14 **drivers competing with men drivers and not being hired?**  
 15 A. I can't remember any.  
 16 **Q. Do you recall when the women drivers that were**  
 17 **hired there, during your time you worked at United**  
 18 **Freight, whether or not they were competing against other**  
 19 **men at the same time for that one slot?**  
 20 A. No, not that I remember.  
 21 **Q. You mentioned earlier about the one woman who**  
 22 **did not like the boss because -- and the boss wanted the**  
 23 **drivers to work off the clock. Was there a grievance**  
 24 **filed on that one?**  
 25 A. No, with her, no.  
 Page 123

1 **Q. Did the other drivers file a grievance?**  
 2 A. Yes.  
 3 **Q. And I guess the practice had to stop; is that**  
 4 **correct?**  
 5 A. No.  
 6 **Q. The union let the drivers continue to do it?**  
 7 A. Yeah.  
 8 **Q. Doesn't the -- don't the federal regs count**  
 9 **that as work time?**  
 10 A. Yeah.  
 11 **Q. Why did the union let these guys working for**  
 12 **the company, allow these guys to do it working off the**  
 13 **clock?**  
 14 A. The answer I got was there's nothing we can do  
 15 about it. It's what a driver wants to do on his own  
 16 time.  
 17 **Q. Is that still going on now?**  
 18 A. To my knowledge, I don't know.  
 19 **Q. Was it going on in '03?**  
 20 A. Yes.  
 21 **Q. What would happen to a driver if they didn't**  
 22 **want to work off the clock?**  
 23 A. Legality wise, nothing.  
 24 **Q. Okay. Go ahead.**  
 25 A. We're not going to go into it.  
 Page 124

1 **Q. Why?**  
 2 A. Pressure. Let's just put it that way --  
 3 pressure from the company.  
 4 **Q. What kind of pressure?**  
 5 MR. EVANS: Objection to the relevance of going  
 6 into -- do you want to conduct a deposition on a  
 7 potential wage and hour claim be my guest -- unless it  
 8 relates to this --  
 9 MR. LEGACKI: I could think of the relevancy of  
 10 it in the sense though as we talked about yesterday, you  
 11 know, Mike Posciri is business agent and the union would  
 12 not have had anything to do with, you know, did they want  
 13 the wife of a business agent, who may change that policy.  
 14 Go ahead.  
 15 Sorry to put you on the spot, but you no longer  
 16 work for the company.  
 17 THE WITNESS: In my case I was pulled out of a  
 18 nice truck and put into one of the older dilapidated  
 19 ones.  
 20 BY MR. LEGACKI:  
 21 **Q. So that brings up a point. Let's assume if a**  
 22 **company wanted to try to get rid of somebody, they would**  
 23 **do these kind of things, pull them out of a nice truck**  
 24 **and put them in a dilapidated truck or give them**  
 25 **different shifts, or give them some of the scutt work and**  
 Page 125

32 (Pages 122 to 125)



William Smith

Deposition

December 8, 2006

1 things like that?

2 A. It's possible, yes.

3 Q. So the company was not above harassing

4 employees that they didn't like?

5 MR. EVANS: Objection to characterization.

6 BY MR. LEGACKI:

7 Q. They were not above harassing employees they

8 wanted to get rid of?

9 MR. EVANS: Same objection.

10 THE WITNESS: I just -- I never got into it

11 that deep, so what the company did to an employee, I

12 can't tell you as to what their end result wanted to be;

13 whether they wanted to fire them, or whether they just

14 wanted to discipline or teach them a lesson.

15 BY MR. LEGACKI:

16 Q. Okay. The company could have, if they wanted

17 to be kind of hard nose?

18 A. Yes. That's true in any field.

19 MR. LEGACKI: That's all I have for now.

20 EXAMINATION

21 BY MR. EVANS:

22 Q. Mr. Smith, when you conducted the driving test

23 for Dan Tullis, did Mr. Tullis perform the test in a safe

24 manner?

25 A. Yes, he did.

Page 126

1 Q. And how would that trouble come up? How were

2 you aware of that?

3 A. Because I had been told by dispatch that they

4 put an open call in and they had not received anybody.

5 Q. So they had -- sometimes United Freight had

6 trouble getting any drivers at all from the union?

7 A. Yes.

8 Q. But let's say they have one position open and

9 it was United Freight's desire to have at least two or

10 three drivers to look at and see who would be best, and

11 they asked the union for two or three drivers. Did they

12 ever have trouble getting those two or three drivers?

13 A. Yes.

14 Q. And why would they have trouble?

15 A. There wasn't any available.

16 Q. Did it ever happen that the union would say

17 you're only allowed to have one at a time?

18 A. No.

19 Q. Did you have contact with the union regarding

20 who was going to come out for the driving test?

21 A. No.

22 Q. Would that have been Dana, the dispatcher?

23 A. Yes.

24 MS. KUCUK: We don't have any further

25 questions.

Page 128

1 Q. Did you have any concerns about his safety at

2 all during his driving test?

3 A. No.

4 Q. When you were asked after the completion of

5 your -- the driving test of Dan Tullis to pick which

6 driver between Shotsay and Dan Tullis performed better,

7 did anyone at United Freight indicate to you in any way,

8 or any fashion, which driver you should pick?

9 A. No.

10 Q. Was Shotsay Posciri's gender a factor at all in

11 your decision as to which driver you picked?

12 A. No.

13 Q. In your experience at United Freight and your

14 involvement in the hiring process, has union seniority,

15 overall union seniority, to your knowledge, ever been a

16 factor on which drivers were selected by United Freight?

17 A. Once they're dispatched down to United Freight,

18 no.

19 MR. EVANS: I have no other questions.

20 FURTHER EXAMINATION

21 BY MS. KUCUK:

22 Q. To your knowledge, did United Freight ever have

23 any trouble getting more drivers than there were open

24 positions from the union?

25 A. Yes.

Page 127

1 FURTHER EXAMINATION

2 BY MR. LEGACKI:

3 Q. The hours at United Freight is it pretty much a

4 steady work day, I mean, as far as like 8:00 to 5:00 or

5 something like that -- pretty routine?

6 A. I'll give you a background of what happens at

7 United Freight so you can get a clear picture of what

8 goes on.

9 Sunday is a ship day. 99 percent of the time

10 every man is called in on a ship day so we can get

11 freight on the streets for customers because they want it

12 before they're even off the ship.

13 Monday is the day after ship day. We call in

14 and everybody to clear off the Port as many vans as the

15 customers want. Monday just before noon, the dispatcher

16 will figure out how many drivers, or how many trailers

17 are going to be delivered in the afternoon, and they go

18 through a process that determines how many drivers they

19 need to deliver those trailers.

20 And if we don't need all 20 drivers, he will

21 start at the top of the seniority list and say, do you

22 want to work this afternoon or do you want to go home,

23 until he gets the number of drivers he wants.

24 Tuesday is ship day. So everybody is called

25 in on Tuesday. Same process happens Wednesday morning,

Page 129

33 (Pages 126 to 129)